

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Patent Application

Applicant(s): Lior Shabtay
Case: 500001-A-01-US (Shabtay)
Serial No.: 09/718,143
Filing Date: November 21, 2000
Group: 2153
Examiner: Aaron N. Strange

Title: Dynamic Load Balancer

REPLY BRIEF

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

The remarks which follow are submitted in response to the Examiner's Answer dated June 5, 2007 in the above-identified application. The arguments presented by Applicant (hereinafter "Appellant") in the Appeal Brief dated January 23, 2007 are hereby incorporated by reference.

Appellant will respond herein to certain arguments raised by the Examiner in Section (10), pp. 14-18, of the Examiner's Answer.

With regard to claim 6:

Claim 6 is rejected under 35 U.S.C. §112, second paragraph. Appellant attempted to amend this claim after final rejection under 37 C.F.R. §1.116(b). This amendment was not entered.

On pp. 14 and 15 of the Examiner's Answer, the Examiner states that "Appellant has had numerous opportunities to amend the claims since that amendment was denied entry, and has chosen not to do so." Appellant notes, however, that any further attempt to amend claim 6 would have

required that prosecution be reopened after filing an Appeal Brief. Instead of reopening prosecution, Appellant chose on two occasions to reinstate the appeal in order expedite prosecution of an application already pending since late 2000.

With regard to claims 1-5, 8, 10-19, 28, 30, 32, and 37:

On pp. 15-18 of the Examiner's Answer, the Examiner further argues that the limitations of claims 1-5, 8, 10-19, 28, 30, 32, and 37 are obvious over Bernstein in view of Cohen. Appellant wishes to reiterate, however, that the addition of aspects of Cohen to the primary reference, Bernstein, in the manner set forth by the Examiner would change the principle of operation of Bernstein. Bernstein's router accelerator forwards packets based on a packet forwarding table 608. Bernstein, col. 5, l. 66 to col. 6, l. 8; and FIG. 7. The router accelerator populates this table by examining packets before and after they are forwarded by the accelerated router (i.e., the router being accelerated by the router accelerator). Bernstein, col. 6, ll. 14-65; and FIG. 9. This requires that the router accelerator be able to recognize the same packet before and after that packet is forwarded by the accelerated router. The router accelerator uses the IP destination address to accomplish this recognition. Bernstein, col. 6, ll. 49-54; and FIG. 9 (steps 904 and 914). Therefore, neither Bernstein's router accelerator nor Bernstein's accelerated router can change the IP destination addresses of packets that they forward. If they were to do so, the recognition process required to form the packet forwarding table would be inoperative.

Because, as the Examiner correctly states, "Bernstein fails to specifically disclose that the router is a load balancer configured to operate in a first mode that changes at least one of a destination IP address and a destination port and a second mode that changes at least a source IP address and a destination IP address of one or more packets it forwards" (Current Office Action, p. 6), the Examiner relies on Cohen to teach a load balancer which can operate in these modes. However, in making this combination, the Examiner is effectively attempting to add a load balancer which changes the IP destination address (Cohen) to a load balancer which will not function if the IP destination address is changed (Bernstein). As a result, such a combination would either be inoperative or require a major redesign of the way in which packets are handled and routed in

Bernstein's invention. The combination would be far from being "trivial," as argued by the Examiner.

With regard to claims 29, 33, 34, and 35:

On pp. 18 of the Answer, the Examiner states that Appellant, when discussing claims 29, 33, 34, and 35 in the Appeal Brief, has "merely made a general assertion that the references do not disclose the claimed subject matter" and that "reference should have made to the Grounds of Rejection for these claims, which points out the portions of the cited references that disclose these claims." Appellant notes, however, that each one of these claims were "rejected under the same rationale as claims 6, 7, and 9, since they recite similar subject matter." Current Office Action, p. 12. Therefore, rather than repeating the same argument several times in the Appeal Brief, Appellant stated that claims 29, 33, 34, and 35 are "in condition for allowance for the same reasons as [their] base claim as well as the reasons described above with respect to claims 6, 7, and 9." Current Office Action, p. 12. In addition, Appellant further noted that these claims contain separately patentable subject matter. Appellant respectfully submits that these arguments are completely responsive with respect to the patentability of these claims.

With regard to claim 38:

With regard to claim 38, the Examiner argues that "splicing" is not defined in the specification. Answer, p. 18. Appellant respectfully disagrees and submits that the term is, indeed, explicitly defined in the specification at p. 20, ll. 8-11. Here, Appellant describes the characteristics of a forwarding mode and states that this mode is "referred to as splicing." This would seem to be the defining of this term "with reasonable clarity, deliberateness, and precision," as required by In re Paulsen, 30 F.3d 1475, 1480, 31 USPQ2d 1671, 1674 (Fed. Cir. 1994) and MPEP §2111.01.

For at least the reasons presented above and those in the Appeal Brief, Appellant respectfully requests the withdrawal of the §112 and §103(a) rejections.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Michael L. Wise". The signature is fluid and cursive, with a prominent initial "M" and a clear "L." followed by the surname "Wise".

Date: July 23, 2007

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